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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,952	10/31/2001	Stefan Vilsmeier	SCHWP0154US	8866

7590 06/09/2005
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 Euclid Avenue, Nineteenth Floor
Cleveland, OH 44115-2191

EXAMINER

DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,952

Applicant(s)

VILSMEIER ET AL.

Examiner

D. Jacob Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8-12 and 16-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,203,543 to Glossop. Glossop is interpreted in two ways. The first way is demonstrated in figure 1 of this Office action and reads on claims 1-3, 8-14 and 16-24. There is *substantially* no play between the securing element and the guide. The proximal threaded section of the securing element interacts with the groove.

Claims 1, 2, 6 and 7 read on the second interpretation of the device as demonstrated in figure 2D. The “operative section that is insertable into bone” does not recite a method step, but is a functional recitation. To meet the limitation, the device must be capable of performing the recitation. The “operative section” is fully *capable* of being inserted into bone.

Claims 1-4, 8-11 and 13-22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,719,757 to Neubauer et al. Neubauer discloses a fixing device comprising an

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operative section 45 and a head 44. The operative section is a guide since it guides the prongs 43. There is an intermediate section between the head and the operative section, which has a larger diameter than the operative section. Regarding claim 9, the "intermediate section" is considered the "lower end" of the operative section and is tapered. The device comprises a connecting element comprising the arm that receives the positioning member. The prongs 43 comprised securing elements. The positioning element 41 is fixed to the fixing system 43, 44, 45 by an adjusting device 48.

Response to Arguments

Applicant's arguments filed April 7, 2005 have been fully considered but they are not persuasive. Applicant stated, "...The bone screw 12 is a solid screw, without a guide." The bone screw 12 has a guide 14. Figure 2A, illustrates the intended method of use of the devices such that the screw 12 is passed through the sleeve 14. "As shown in FIG. 2A, the sleeve 14 axially receives the bone screw 12." For at least this reason, the sleeve 14 may rightfully be considered a guide in either embodiment.

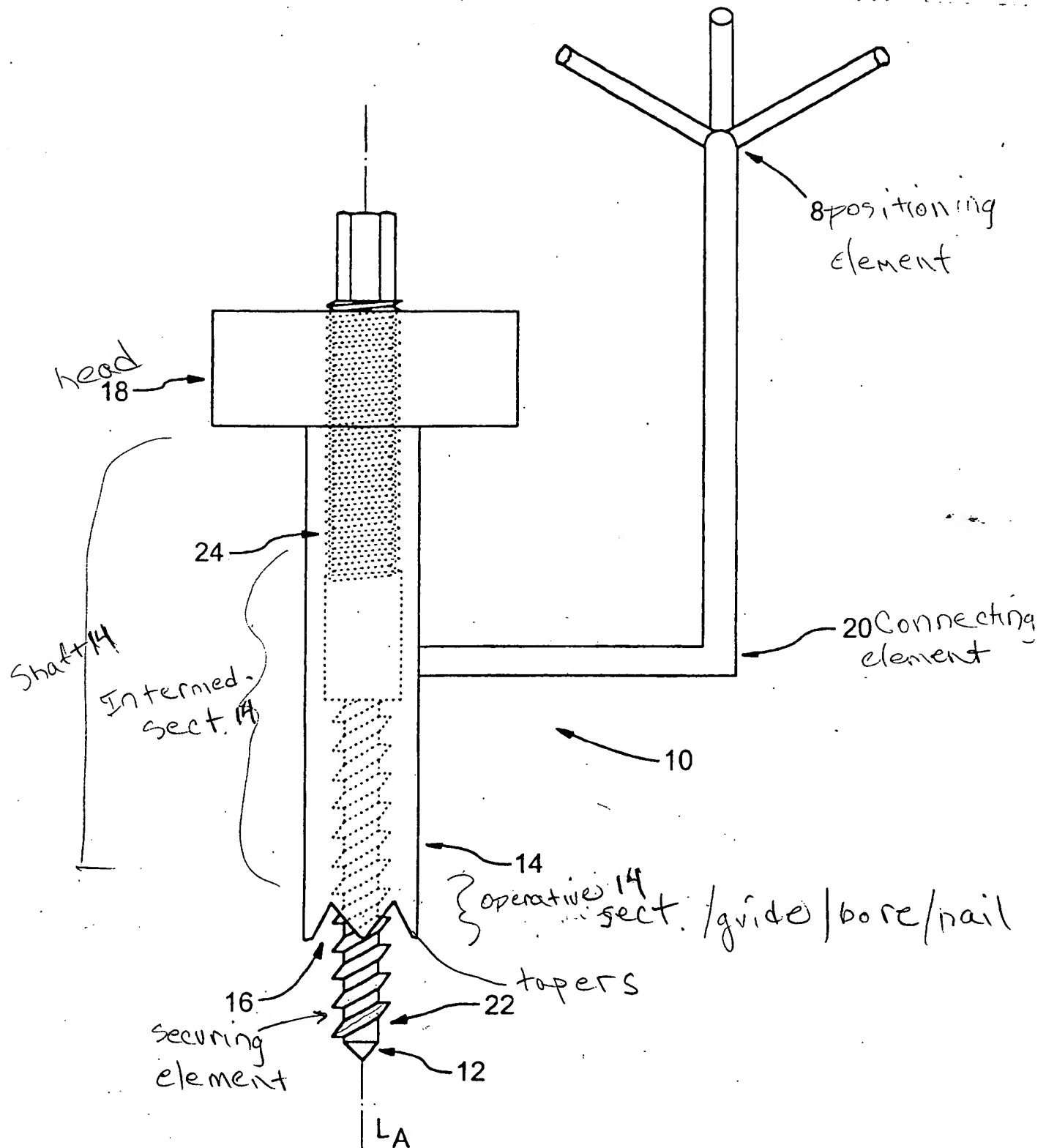


FIG. 1

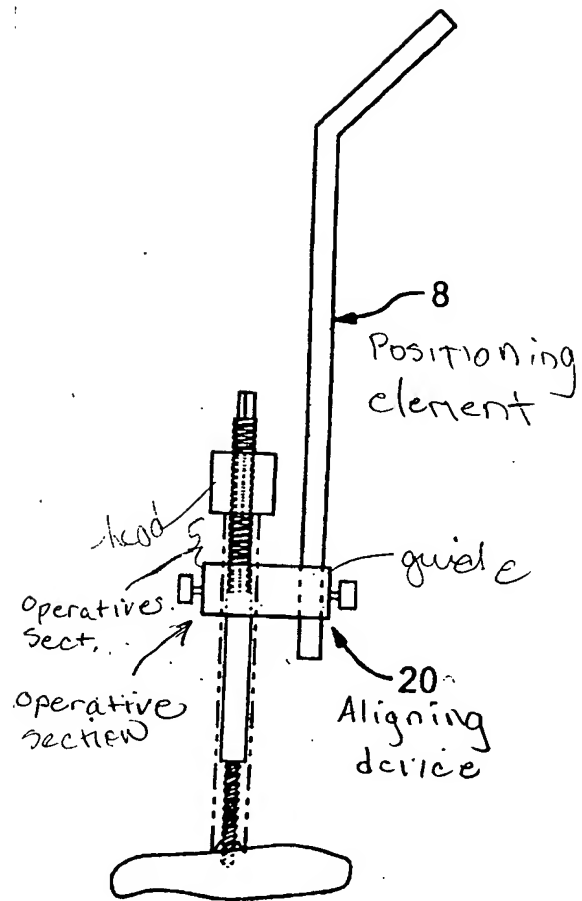


FIG. 2D

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (571) 272-4693. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD


GLENN K. DAWSON
PRIMARY EXAMINER